

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Express Service
Agreement 1 (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-6

NOTICE OF THE CHAIRMAN DESIGNATING PRESIDING OFFICER AND RULING
GRANTING MOTION FOR PARTIAL RECONSIDERATION

(Issued June 30, 2017)

Designation of Presiding Officer. Pursuant to section 3604(a) of the Postal Reorganization Act (39 U.S.C. § 504(a)), I hereby designate myself to serve as Presiding Officer in the above captioned docket. This designation shall become effective immediately.

Motion for partial reconsideration. In Order No. 3457, the Commission approved a modification to Inbound Market Dominant Express Service Agreement 1 (Agreement).¹ In doing so, the Commission directed the Postal Service to provide financial workpapers in future filings pertaining to the Agreement. Order No. 3457 at 7.

On May 31, 2017, the Postal Service filed a notice describing updates concerning the Agreement.² To assist the Commission's review of the modifications, the Postal Service was requested to provide the information previously specified in Order No. 3457.³

¹ Order Approving Modification of Express Service Agreement, August 8, 2016 (Order No. 3457).

² Notice of United States Postal Service Providing Update Concerning Inbound Market Dominant Express Service Agreement 1, May 31, 2017 (Notice).

³ Chairman's Information Request No. 1, June 1, 2017 (CHIR No. 1).

In response, the Postal Service filed a motion for partial reconsideration of CHIR No. 1 and Order No. 3457.⁴ The Postal Service requests the Commission to reconsider CHIR No. 1 and Order No. 3457 “so as to not require the production of financial information in this instance, and not require the production of country-specific data in any case.” Motion at 5. The Postal Service also asks the Commission to clarify Order No. 3457 by describing the circumstances when financial data will be required, apart from regular reporting under the Annual Compliance Report (ACR) or when the agreement changes in a material way as to affect its financial performance. Should the Commission require production of the requested data, the Postal Service requests that it be allowed six weeks to submit its response to CHIR No. 1. *Id.*

The Commission is tasked with evaluating whether a market dominant negotiated service agreement or a modification to such an agreement meets statutory and regulatory requirements.⁵ In doing so, the Commission must determine whether an agreement as changed by a proposed modification would continue to improve the net financial position of the Postal Service in accordance with 39 U.S.C. § 3622(c)(10). Pursuant to 39 C.F.R. 3010.42, financial information is required when a modification proposes to change rates, fees, or mail classifications. The Commission also has the discretion to request financial information to determine whether a proposed modification may implicate a *de facto* rate change or otherwise affect the agreement’s net financial analysis. See Order No. 3457 at 5 (explaining that certain modifications affect the net financial analysis and cost coverage of the agreement, even though prices had not changed).

Here, the Postal Service contends that the changes that prompted CHIR No. 1 are “inconsequential to the financial performance of the agreement” and that “there

⁴ Motion for Partial Reconsideration of Chairman’s Information Request No. 1 and Order No. 3457, or, in the Alternative, Motion for Extension of Time to Submit Response of the United States Postal Service to Chairman’s Information Request No. 1, June 8, 2017 (Motion).

⁵ Although the Postal Service is required to report information on the agreement through the ACR process, the Postal Service is also required to provide certain mailer-specific information pursuant to 39 C.F.R. 3010.42(f) for Type-2 rate changes.

have been no changes in circumstances that might cause the agreement's cost coverage to change significantly." Motion at 1, 4. Indeed, v6.1 of Annex 2 includes changes to v6.0 of Annex 2 that are format-based and thus, do not require any additional information for evaluation. However, v7.0 of Annex 2 adds a tab to include a Postal Service International Service Center office. CHIR No. 1 requested financial workpapers to assess the significance of this change on the agreement's financial performance.

Having considered the Motion, the Presiding Officer finds the Postal Service's assertions are persuasive. As a result, CHIR No. 1 is being vacated by this ruling and is being replaced by Presiding Officer's Information Request No. 1 (POIR No. 1), issued concurrently herewith. POIR No. 1 requests confirmation that the addition of an International Service Center will continue to allow the agreement, as modified, to improve the net financial position of the Postal Service.

The Postal Service also asks the Commission to clarify Order No. 3457 by describing the circumstances when financial data will be required. Motion at 5. In accordance with 39 C.F.R. 3010.42, the Postal Service must file financial information when a modification proposes to change rates, fees, or mail classifications. In future cases, if the Postal Service believes a proposed modification to the agreement does not change rates, fees, or mail classifications, the Presiding Officer suggests that the Postal Service confirm such conclusion with a brief explanation of the basis for its belief when it files notice of the modification. This clarification is not intended to restrict the Presiding Officer's or Commission's discretion to request financial information to determine whether a proposed modification may implicate a *de facto* rate change or otherwise affect the agreement's net financial analysis. See Order No. 3457 at 5, *supra*.

Finally, the Postal Service's Notice, which informed the Commission of a June 2016 corrected version of Annex 2 to this agreement, is the second late filing in this docket. See Order No. 3457 at 4 (noting that the Postal Service had not filed revisions to two annexes until after they had already gone into effect). The untimely filing of such

notices is concerning as they hinder the Commission's ability to timely assess whether agreements and subsequent modifications affect compliance with 39 U.S.C. § 3622(c)(10). The Postal Service is reminded of the Commission's directive in Order No. 3471 that it is to promptly notify the Commission should there be a delay and to include an explanation for the delay in its filing.⁶

It is ordered:

1. The Motion for Partial Reconsideration of Chairman's Information Request No. 1 and Order No. 3457, or, in the Alternative, Motion for Extension of Time to Submit Response of the United States Postal Service to Chairman's Information Request No. 1, June 8, 2017, is granted as discussed in the body of this Ruling.
2. Chairman's Information Request No. 1 is hereby vacated.

Robert G. Taub
Presiding Officer

⁶ Docket No. R2016-6, Order Adding Inbound Market Dominant Registered Service Agreement 1 to the Market Dominant Product List and Approving Type 2 Rate Adjustment, August 17, 2016, at 9 (Order No. 3471).